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Pardons and Paroles Board -
Prisons and Prisoners -
Pardons and Paroles

Discussion of authority of
Board of Pardons and Paroles
to pardon or parole an escaped
prisoner.

Opinion by Assistant Attorney
General Breland

Dear Mr. Williams:

You have asked for an opinion from this office as to whether the Board of Pardons and Paroles has jurisdiction to pardon or parole a prisoner who is on escape from the Alabama penal system. You state that the Board is occasionally asked to pardon or parole an escaped convict in situations where information presented indicates that such an action might be for the public good. You further state that the Board has traditionally taken the position that it lacked jurisdiction in such cases.

It is my opinion that the Board has taken the correct position. The Board's authority to grant pardons is outlined in Section 15-22-36(c), Code of Alabama 1975, which reads as follows:

"(c) No pardon shall relieve one from civil and political disabilities unless specifically expressed in the

pardon; and no pardon shall be granted unless the prisoner has successfully completed at least three years of permanent parole or until the expiration of his sentence if his sentence was for less than three years, except upon the unanimous affirmative vote of the board following receipt and filing of clear proof of his innocence of the crime for which he was convicted and the written approval of the judge who tried his case or district attorney or with the written approval of a circuit judge in the circuit where he was convicted if the judge who tried his case is dead or no longer serving."

This section makes it clear that the Board has no authority to grant a pardon unless the prisoner has (1) successfully completed 3 years of parole, (2) served out his sentence if the sentence was for less than 3 years, or (3) filed clear and convincing proof of his innocence with the Board, along with the written approval of the appropriate judge or district attorney.

Following the above guidelines, an escaped prisoner could only be pardoned if he presented clear and convincing evidence of his innocence and gained the unanimous affirmative vote of the Board. Without such proof, the Board has neither the authority nor the jurisdiction to pardon.

The Board's authority to parole is governed by several Code provisions. Section 15-22-28(e), Code of Alabama 1975, provides that the Board shall not grant a parole to any prisoner who has not served at least one third or ten years of his sentence, whichever is less, except by a unanimous vote of the Board. Section 15-22-28(d), Code of Alabama 1975, provides that no prisoner shall be released on parole unless he has a majority vote of the Board, and unless the Board is satisfied that he will have suitable employment and will not become a public charge if released.

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Section 15-22-26, Code of Alabama 1975, provides that the Board may not grant a parole merely as a reward for good conduct, but only if the Board believes that the prisoner, if released, will remain at liberty without violating the law and that his release will be compatible with the welfare of society.

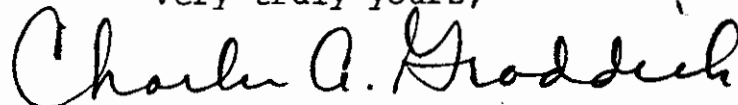
These statutes do not explicitly state that the prisoner must be in custody in order to be eligible for parole. However, such a conclusion is implicit in reading the statutes governing paroles as a whole. For example, the statutes repeatedly speak in terms of "releasing" a prisoner on parole, which, of course, implies that he must be in custody in order to be released. And, Section 15-22-28, Code of Alabama 1975, provides that it shall be the duty of the Board to investigate all prisoners in the jails and prisons of the state for the purpose of determining the feasibility of releasing them on parole.

It becomes apparent that the drafters of the statutes governing parole assumed that the Board would have jurisdiction to parole only those prisoners who were actually in the custody of Alabama authorities.

It is unfortunate that the statute may work a hardship in isolated cases where it appears that a pardon or parole for an escaped prisoner would be in the best interest of the public. However, as you know, the overall public good is better served by adhering to a statute which controls and limits the power to pardon and parole. I would further point out that, in those isolated cases, usually where the prisoner has been on escape for a great many years and the crime he committed was relatively insignificant, the prisoner always has the option of turning himself in to the custody of the Parole Board and requesting a parole.

I trust that I have answered your question sufficiently.

Very truly yours,

A handwritten signature in cursive script that reads "Charles A. Graddick".

CHARLES A. GRADDICK
Attorney General